

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ACHENBAUM CAPITAL PARTNERS, LLC  
and NATURE'S EQUITY, LLC,

Plaintiffs,

-against-

SELECT NUTRITION DISTRIBUTORS,

Defendant.

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**ORDER**

CV 04-3304 (ADS)(ARL)

**LINDSAY, Magistrate Judge:**

Before the court is the plaintiffs' letter application requesting that the court hold an immediate conference to address the defendant's failure to respond to the plaintiffs' request for documents and demand for interrogatories. The plaintiffs indicate in their application that, during the conference, they intend to request an order compelling the defendant to respond to the outstanding requests by May 20, 2005. They also intend to seek a ruling that the defendant has waived its right to take the plaintiffs' depositions based on its failure to timely respond to the plaintiffs' requests. In the alternative, the plaintiffs intend to seek an extension of the discovery schedule. The court finds that a conference is unnecessary, and thus, the plaintiffs' request is denied despite the lack of opposition.

As a threshold matter, the plaintiffs' application seeking to compel the defendant to respond to their requests by May 20, 2005 did not provide the defendant will adequate time to respond to the application pursuant to Local Rule 37.3(c). Moreover, the plaintiffs' request for a ruling that the defendant has waived its right to take the plaintiffs' depositions based on its failure to timely respond is without merit. The defendant's responses were due May 13, 2005, five days

before the plaintiffs submitted the instant application, and thus, the defendant's failure to respond does not warrant such a severe penalty.

Nonetheless, the court directs the defendant to respond to the outstanding requests on or before June 1, 2005. The plaintiffs' request for an extension of the discovery deadline, which is primarily based their counsel's upcoming vacation schedule, is granted. The deadline for all discovery, inclusive of expert discovery, is extended to July 15, 2005. Any party planning on making a dispositive motion shall take the first step in the motion process by July 29, 2005. The parties are directed to consult Judge Spatt's individual rule's regarding such motion practice. The final conference is adjourned to August 10, 2005 at 11:00 a.m.

Dated: Central Islip, New York  
May 24, 2005

**SO ORDERED:**

\_\_\_\_\_/s/\_\_\_\_\_  
ARLENE ROSARIO LINDSAY  
United States Magistrate Judge